

(e) shall be used in determining whether a product meets the criteria for a nutrient content claim. If the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the descriptor for that nutrient, the claim shall be followed by the criteria for the claim as required by § 381.412(f) (e.g., “very low sodium, 35 mg or less per 55 grams”).

(2) The criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size that is no less than that required by § 381.121(c) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the criteria statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(q) The following exemptions apply:

(1) Nutrient content claims that have not been defined by regulation and that appear as part of a brand name that was in use prior to November 27, 1991, may continue to be used as part of that brand name, provided they are not false or misleading under section 4(h) of the Act (21 U.S.C. 453(h)(4)).

(2) [Reserved]

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 381.409 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

(4) The requirements of this section do not apply to infant formulas and medical foods, as described in 21 CFR 101.13(q)(4).

(5) [Reserved]

(6) Nutrient content claims that were part of the name of a product that was subject to a standard of identity as of November 27, 1991, are not subject to the requirements of paragraph (b) of

this section whether or not they meet the definition of the descriptive term.

(7) Implied nutrient content claims may be used as part of a brand name, provided that the use of the claim has been authorized by FSIS. Labeling applications requesting approval of such a claim may be submitted pursuant to § 381.469.

[58 FR 675, Jan. 6, 1993; 58 FR 43789, Aug. 18, 1993, as amended at 58 FR 47628, Sept. 10, 1993; 59 FR 40215, Aug. 8, 1994; 59 FR 45198, Sept. 1, 1994; 60 FR 208, Jan. 3, 1995]

#### §§ 381.414–381.442 [Reserved]

#### § 381.443 Significant participation for voluntary nutrition labeling.

(a) In evaluating significant participation for voluntary nutrition labeling, FSIS will consider only the major cuts of single-ingredient, raw poultry products, as identified in § 381.444, including those that have been previously frozen.

(b) FSIS will judge a food retailer to be participating at a significant level if the retailer provides nutrition labeling information for at least 90 percent of the major cuts of single-ingredient, raw poultry products, listed in § 381.444, that it sells, and if the nutrition label is consistent in content and format with the mandatory program, or nutrition information is displayed at point-of-purchase in an appropriate manner.

(c) To determine whether there is significant participation by retailers under the voluntary nutrition labeling guidelines, FSIS will select a representative sample of companies allocated by type and size.

(d) FSIS will find that significant participation by food retailers exists if at least 60 percent of all companies that are evaluated are participating in accordance with the guidelines.

(e) FSIS will evaluate significant participation of the voluntary program every 2 years beginning in May 1995.

(1) If significant participation is found, the voluntary nutrition labeling guidelines shall remain in effect.

(2) If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program.